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Rule 3. Commencement Of Action; "Clerk" Defined.

(a) A civil action is commenced by filing a complaint with the clerk of the court who shall note thereon the date and precise time of filing.

(b) The term "clerk of the court" as used in these Rules means the circuit clerk and, with respect to probate matters, any county clerk who serves as ex officio clerk of the probate division of the circuit court pursuant to Ark. Code Ann. § 14-14-502(b)(2)(B). In counties where the county clerk serves as the ex officio clerk of any division of the circuit court, the filing requirement shall be satisfied when the complaint is filed with either the circuit clerk or the county clerk.

(c) The clerk shall assign a new case number and charge a new filing fee for the filing of any case that is refiled after having been dismissed.

(d) No other claim or counterclaim for relief, including without limitation, divorce, annulment, separate maintenance, or paternity, shall be asserted in an action filed under the Domestic Abuse Act, Ark. Code Ann. § 9-15-101 et seq., but a separate action seeking other relief shall be filed, and the clerk shall assign a new case number and charge a filing fee unless the filing fee is waived pursuant to Rule 72 of these rules.

(e) A petition for adoption cannot be asserted in a guardianship proceeding, but a separate action shall be filed, and the clerk shall assign a new case number and charge a filing fee unless the filing fee is waived pursuant to Rule 72 of these rules.

Reporter's Notes to Rule 3: -

1. This Rule changes Arkansas law. The statute, Ark. Stat. Ann. 27-301 (Repl. 1962), which is superseded by this rule provided, in part, that an action was commenced by filing a complaint and placing it and a summons in the hands of the sheriff of the proper County. Under this Rule, an action will commence without regard to receipt by the process server, subject only to the requirement that service be completed within 60 days from the filing of the complaint, unless the time for service has been extended by the Court.

2. This rule will do away with uncertainty in "race to venue" and statute of limitation cases as to where or when the action was first commenced. It will also do away with the need to decide whether the Complaint and Summons have been placed in the hands of the sheriff with reasonable expectations of service or whether the Complainant has acted in good faith in trying to effect service. See *Williams v. Edmondson and Ward*, 257 Ark. 837, 250 S.W.2d 260 (1975). Instead, where service is in issue under the 60 days or extension proviso, actual service will be the standard. If actual service is not made within 60 days, the Court may extend the time for service, thus protecting the plaintiff against the running of the statute

where there is good cause to do so.

3. FRCP 3 contains no proviso regarding the obtaining of service of process within a specified period after the complaint is filed. Federal courts are thus plagued with the question whether filing a complaint tolls the statute of limitations where there is an allegation of lack of diligence in obtaining service. See Wright and Miller, *Federal Practice and Procedure*, 1056 (1969). This rule will effectively cause the decision whether delay in service is justified to be made within 60 days of filing rather than at some indefinite later time.

4. The term "proper court" means one which has jurisdiction of the subject matter and parties described in the complaint and in which venue is properly laid.

Addition to Reporter's Notes, 1983 Amendment: - The words of the first sentence of the rule were changed from "precise date and time of filing" to "date and precise time of filing." A second sentence of the rule had provided that an action would not be deemed commenced unless service were obtained within 60 days of filing, with provisions for extension of the time limit. That sentence was deleted, and the matter of the time within which service must be obtained is addressed in Rule 4(i).

Addition to Reporter's Notes, 2001 Amendment: - The word "proper," which modified "court" in the original version of the rule, has been deleted. Also, the one sentence that comprised the rule has been designated as subdivision (a) and a new subdivision (b) added to define the term "clerk of the court." As the original Reporter's Notes accompanying this rule make plain, the "proper court" was one with jurisdiction over the subject matter. When the rule was adopted in 1978, that jurisdiction was divided among three courts - circuit, chancery, and probate. Under Constitutional Amendment 80, however, the circuit court is the single trial court of general jurisdiction. The original Reporter's Notes to this rule also state that the term "proper court" referred to the court "in which venue is properly laid." This issue has since been addressed in Rule 12(h)(3), which provides that in cases where venue is improper, the court may either "dismiss the action or direct that it be transferred to a county where venue would be proper." In the event of a transfer pursuant to this provision, the action remains "commenced" as of the date of the original filing. If the action is dismissed, it was nonetheless commenced for statute of limitations purposes and may be refiled within one year under the savings statute, Ark. Code Ann. 16-56-126. See *Forrest City Machine Works v. Lyons*, 315 Ark. 173, 866 S.W.2d 372 (1993) (savings statute is applicable when action is dismissed for insufficient service of process). Subdivision (b) has been added in light of Administrative Order No. 14 of the Supreme Court and Act 997 of 2001. The order, adopted pursuant to Section 6(B) of Amendment 80, requires the judges of each judicial circuit to establish the following divisions: criminal, civil, juvenile, probate, and domestic relations divisions. Act 997, which amended Ark. Code Ann. 14-14-502(a)(2)(B), provides that in those counties in which county clerks have been elected, the county clerk "may be ex officio clerk of the probate division of circuit court, if such division exists, of the county until otherwise provided by the General Assembly." Consequently, in some counties probate proceedings will be initiated by a filing in the county clerk's office, and in such cases the county clerk will be the "clerk of the court" for other purposes under these Rules. Most probate matters are "special proceedings" within the meaning of Rule 81(a) and thus governed by statutory procedures, if any, rather than by these Rules. See, e.g., *In re Adoption of Martindale*, 327 Ark. 685, 940 S.W.2d 491 (1997) (adoption); *Screeton v. Crumpler*, 273 Ark. 167, 617 S.W.2d 847 (1981) (probate of will). However, some probate matters are civil actions. See, e.g., *Coleman v. Coleman*, 257 Ark. 404, 520 S.W.2d 239 (1974) (proceeding by which a claim against the estate of a deceased person is reduced to judgment is a civil action). The status of a particular probate

matter as a special proceeding or a civil action has no bearing on where the papers are to be filed. Filing in the wrong clerk's office is not fatal, and the action is commenced as of the filing date. Cf. *Linder v. Howard*, 296 Ark. 414, 757 S.W.2d 562 (1995) (the timely filing of the complaint in chancery court tolled the statute of limitations even though the case should have been brought in circuit court and was transferred there after statute had run).

Addition to Reporter's Notes, 2003 Amendment: - The statutory reference in subdivision (b) has been corrected.

Addition to Reporter's Notes, 2005 Amendment: - Rule 3(b) has been amended. As the Rule states, in some counties the county clerk serves as the ex officio clerk of the probate division of the circuit court. Uncertainties have arisen in these circumstances about the effect of filing a pleading or paper with the wrong clerk. A sentence has been added to subsection (b) to make plain that, in these counties, a party complies with Rule 3(a) when the complaint is filed marked by either the circuit clerk or the county clerk. This new provision accords with pre-Amendment 80 cases. Cf., *Linder v. Howard*, 296 Ark. 414, 415-18, 757 S.W.2d 549, 550-51 (1995) (the timely filing of a complaint in chancery court tolled the statute of limitations even though the case should have been brought in circuit court and was transferred there after the statute had run.). Similar clarifying language has been added to Rule of Civil Procedure 5(c)(1) (filing papers in general), Administrative Order Number 2 (clerk's docket and filing), and Rule of Appellate Procedure - Civil 3(b) (filing a notice of appeal).

Addition to Reporter's Notes, 2011 Amendment: The amendment adds a new subdivision (c) to clarify that a new case number is to be assigned and a new filing fee charged for a case re-filed after having been dismissed. The new case number and filing fee requirements apply to cases voluntarily or involuntarily dismissed under Rule 41. The new case number and filing fee requirements do not apply to cases that have not been dismissed but have been closed subject to reopening depending on further developments in the case. Consequently, the requirements do not apply to requests for modification of visitation, custody, or child support provisions in domestic relation cases; the filing of motions for contempt citations; and other requests for court orders in cases that have been closed, but not dismissed. However, other fees or charges authorized by law, such as case reopening fees, may be imposed.

History Text:

History. Amended May 16, 1983; amended May 24, 2001, effective July 1, 2001; amended March 13, 2003; amended February 10, 2005; amended July 1, 2011 by per curiam order June 2, 2011; amended February 23, 2012 [per curiam order].

Associated Court Rules:

Rules of Civil Procedure

Group Title:

II. Commencement of Action; Service of Process, Pleadings, Motions, and Orders

Source URL: <https://courts.arkansas.gov/rules-and-administrative-orders/court-rules/rule-3-commencement-action-clerk-defined>